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CLERK OF COURT

By: _____


IN THE SUPERIOR COURT OF GUAM

In re

Travelers arriving in Guam from Manila,
Philippines on or about March 19, 2020,

Respondents.

Superior Court Case No. SP0049-20

In re

Travelers arriving in Guam from Manila,
Philippines on or about March 20, 2020,

Respondents.

Superior Court Case No. SP0051-20

**ORDER RE PETITIONS FOR ORDER
AUTHORIZING CONTINUED
ISOLATION OR QUARANTINE**

The Court here considers Petitioner Department of Public Health and Social Services' (DPHSS) separate Petitions for an Order Authorizing the Continued Isolation or Quarantine of certain persons arriving on Guam from Manila, Philippines, on or about March 19, 2020, and March 20, 2020. Pet. at 1-2 (Mar. 27, 2020).¹ The Court heard the Petition on April 1, 2020.

I. FACTUAL FINDINGS

The Court makes the following findings by a preponderance of the evidence:

1. President Donald Trump declared a national emergency on March 13, 2020, due to the COVID-19 outbreak in the continental United States. Decl. Linda DeNorcey at ¶ 5 (Mar. 30, 2020).

¹ References to filings pertain to those filed in SP0049-20. The Government filed a largely identical petition on March 30, 2020, concerning the arrivals on March 20, 2020.

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2. On March 14, 2020, *I Maga'hagan Guahan* declared a public health emergency to prepare for a possible COVID-19 outbreak on Guam. *Id.* at ¶ 6; Executive Order (“EO”) No. 2020-03.²
 3. By March 16, 2020, Guam had three confirmed COVID-19 cases. Decl. Linda DeNorcey at ¶ 6; EO No. 2020-04.
 4. On March 16, 2020, *I Maga'hagan Guahan* issued Executive Order 2020-04, part of which restricted entry into Guam. Decl. Linda DeNorcey at ¶ 8; EO No. 2020-04.
 5. Restricting entry into Guam was necessary to reduce the number of potential sources of COVID-19 on Guam and to allow DPHSS sufficient time to investigate the sources of the confirmed COVID-19 cases. Decl. Linda DeNorcey at ¶ 8.
 6. DPHSS determined that a significant number of confirmed COVID-19 cases were linked to travel from the Philippines. *Id.* at ¶ 9.
 7. At the hearing, the Government cited the Philippine’s COVID-19 data as reported by the World Health Organization (WHO). The WHO indicates that as of March 9, 2020, the Philippines had 10 confirmed cases; by March 11, 2020, 49 confirmed cases; by March 16, 2020, 140 confirmed cases; and by March 18, 2020, there were 202 confirmed cases. *See* <https://www.who.int/philippines/emergencies/covid-19-in-the-philippines/covid-19-sitreps-philippines> (last visited April 1, 2020). In other words, the number of confirmed cases from the Philippines increased twenty-fold within the ten days prior to March 19, 2020.³

² Relevant Executive Orders were attached to Petitioner’s Supplemental Documents filed on March 31, 2020.

³ The number of confirmed cases in the Philippines as of March 30, 2020, was 1,546. *Id.*

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8. The Center for Disease Control and Prevention indicates that persons with COVID-19 may become symptomatic within two to fourteen days of infection. Pet. Suppl. Docs., Ex. 2; Decl. Linda DeNorcey at ¶ 12. The CDC further recommends that persons who have travelled internationally in the last 14 days should “**stay home**, monitor your health and practice social distancing for 14 days after you return from travel.” Pet. Suppl. Docs., Ex. 2 (emphasis in original).
 9. As of April 1, 2020, DPHSS has tested more than 300 individuals. Minute Entry (Apr. 1, 2020). Sixty nine individuals have tested positive for COVID-19. *Id.*
 10. Guam has 315 test kits remaining, though the Government expects more shipments soon. *Id.*; see also Decl. Linda DeNorcey at ¶¶ 12-14.
 11. The Government has therefore limited testing to persons meeting certain criteria, such as hospitalized individuals and health care workers. Minute Entry. The limited number of kits prohibits the Government from testing persons outside of certain priority categories. *Id.*
 12. The Court takes judicial notice of Release No. 41 issued by the Joint Information Center on March 31, 2020. The Release announced that a commercial laboratory offers testing for persons outside the priority list. The Release further stated that Medicare, Medicaid and the Medically Indigent Program covered testing.
 13. However, at the hearing, Ms. DeNorcey testified that the private laboratory offering testing follows the same priority categories as the Government. Minute Entry. This means that unless they fall under one of the priority categories, quarantined individuals are not likely to be tested.

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14. Guam has just 15 beds available in the Intensive Care Unit. On March 23, 2020, the Governor's Physicians' Advisory Group stated that if Guam maintains its current spread rate, Guam's healthcare system for critically ill COVID-19 patients will soon be overwhelmed. Pet. Suppl. Docs., Ex. 5; Decl. Linda DeNorcey at ¶ 21.
15. Under her authority under 10 GCA § 10108 and Executive Order No. 2020-03, on March 19 and 20, 2020, DPHSS' Director enacted a mandatory quarantine at a government facility for all persons arriving on Guam who had traveled from the Philippines. Decl. Linda DeNorcey at ¶ 13.
16. DPHSS provided Respondents with a Directive for Temporary Isolation and Quarantine and posted a copy in a conspicuous place in the quarantine premises. *Id.* at ¶ 15; Pet. Suppl. Docs., Ex. 3.
17. The Government prepared a flowchart outlining the scenarios for the Philippine passengers. Pet. Suppl. Docs., Ex. 3. According to the flowchart, if a quarantined individual fails to present COVID-19 symptoms during the 14 days, the Government will issue a Completion of Quarantine Order and allow them to leave. If an individual presents symptoms, the Government will then perform a medical evaluation and test. If a person tests negative, he or she will complete the 14 days and then be released. If a person tests positive, he or she will move into isolation.
18. Upon their arrival in Guam on March 19 and 20, 2020 from the Philippines, some individuals agreed to a quarantine. *Id.* at ¶ 20.⁴
19. Respondents, however, refused to sign voluntary quarantine acknowledgements.

⁴ A distinction exists for those who are reasonably believed to have become infected with COVID-19 or any other contagious or possibly contagious disease. They are immediately placed in isolation at a separate premise. Decl. Linda DeNorcey at ¶ 18; Minute Entry.

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20. The quarantine separates Respondents from their families and work obligations. Resp. Pet. at 2 (Mar. 31, 2020).
 21. DPHSS staffs the quarantine facility with two nurses who perform daily wellness checks, and provides access to a doctor to refill prescriptions.
 22. Respondents' attorney represents that all Respondents consent to being held in quarantine for the 14 days unless they are tested and deemed negative, in which case they ask for immediate release. *Id.*
 23. Fourteen days after March 19, 2020, is April 2, 2020. Fourteen days after March 20, 2020, is April 3, 2020.
 24. DPHSS asked for an order authorizing the continued involuntary detention of Respondents from March 29, 2020 at 12 a.m., to April 28, 2020 at 12 a.m., and/or until "as long as necessary to reasonably determine whether they are infected." Decl. Linda DeNorcey at ¶ 23; Pet. at 4.
 25. Guam does not have the resources to monitor all potentially COVID-19 infected individuals if it sends travellers home to self-quarantine instead of quarantining them at a government facility. Minute Entry. Releasing persons arriving from a COVID-19 "hot spot" such as the Philippines will require DPHSS to do frequent monitoring of hundreds of individuals--resources DPHSS does not currently possess.
 26. At the hearing, DPHSS clarified that it intends to release the following persons on their 14th day of quarantine: asymptomatic individuals, individuals who have tested negative, and individuals who have not had contact with persons exposed to COVID-19. Minute Entry.

27. However, DPHSS asked for an order authorizing the continued involuntary detention until April 28, 2020 at 12 a.m. for any Respondent who has tested positive for COVID-19 or who has had direct contact with someone who has tested positive for COVID-19. Minute Entry.

28. As of April 1, 2020, three individuals arriving on the March 19 and 20 flights who have been quarantined at a government facility tested positive for COVID-19. *Id.* At the time the Petition was filed, none of the Respondents tested positive.

29. DPHSS concedes that at present, 30 persons who have tested positive for COVID-19 self-isolate at home. *Id.* These persons meet certain criteria, such as having existing medical issues or family members who require their presence at home. *Id.* DPHSS routinely monitors these individuals to make sure they are complying with self-isolation measures. *Id.*

II. LAW AND DISCUSSION

During a public health emergency, DPHSS' Director shall use "every available means to prevent the transmission of infectious disease and to ensure that all cases of contagious disease are subject to proper control and treatment." 10 GCA § 19601. These means include quarantining or isolating an individual or group of individuals reasonably suspected of having or carrying a communicable disease. 10 GCA §§ 3310, 19604. Guam law defines "quarantine" as "the physical separation and confinement of an individual or groups of individuals who are, or may have been, exposed to a contagious, or possibly contagious, disease, and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals." 10 GCA § 19104(o). Isolation occurs if a person is infected or reasonably believed to be infected. 10 GCA § 19104(h). Whether

using isolation or quarantine, the Government must use “the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others, and may include, but are not limited to, confinement to private homes or other private and public premises.” 10 GCA § 19604(b)(1). Finally, the Government must provide to those isolated or quarantined access to physicians, health care workers, or others “as necessary to meet [their] needs.” 10 GCA § 19604(d).

If the Government seeks to continue a quarantine beyond ten days, it may petition the Court. 10 GCA § 19605(a)(4). The court shall grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others. 10 GCA § 19605(a)(5).

Because Respondents stipulate to their quarantine for the initial 14 day period, the Court’s inquiry narrows to what happens upon the expiration of the 14 days, i.e., what least restrictive means are reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others. The Court finds the answer depends on if the Respondent is symptomatic or tests negative for the virus.

Following the CDC Guidelines, a person affected by COVID-19 will exhibit symptoms within two to fourteen days. The Government has not produced any evidence which indicates that an asymptomatic person on the 14th day may nonetheless be infected and thus contagious. The Government’s flowchart also stipulates to release if a quarantined person is asymptomatic or tests negative.

Based on the evidence produced to this Court, the Court must conclude that quarantining an asymptomatic person who returns from the Philippines for more than 14 days is not reasonably necessary to prevent or limit the transmission of COVID-19. All residents of Guam

face mandatory home quarantine mandates, and this applies to quarantined individuals who are released and asymptomatic after 14 days. Release of such individuals to a home quarantine environment is a more reasonable means to prevent or limit the transmission of COVID-19, and certainly a less restrictive means in place of a continued quarantine at a government facility.

However, during the hearing, the Government emphasized that the situation changes for a quarantined individual who comes into contact with a COVID-19 positive individual during his quarantine. A quarantined individual may be asymptomatic on day 10 of his quarantine, but if he comes into contact with a COVID-19 positive individual, there is a chance that he is now infected. Therefore, DPHSS asks for a continued, renewed 14-day quarantine. The Government emphasizes COVID-19's exponential growth curve, Guam's lack of resources to monitor all individuals who self-isolate at home, and the high chances that a quarantined person who comes in contact with a COVID-19 positive individual is now infected. At the time the Government determined to implement the quarantine directive, it appeared impractical to follow the CDC's Guidelines to allow international travelers to "stay home." This position may change as DPHSS continues to monitor developments of the spread of COVID-19, the availability of testing, the availability of resources to monitor suspected cases and positive results. However, for the time being, the Court is persuaded that the Government's request to continue the quarantine for those who have had contact with others presents the least restrictive means necessary to prevent the spread of COVID-19.

The Court notes that if any Respondent obtains a test⁵ and a COVID-19 negative result, it is not reasonably necessary to continue to quarantine that person either before or after the 14 days. Again, that person remains subject to the Government's home quarantine mandate upon release.

The Court is aware that DPHSS allows some COVID-19 positive individuals to self-isolate if they meet certain criteria and agree to certain conditions. DPHSS has a record of these individuals and can more easily monitor them than if all quarantined individuals self-isolated. Moreover, Respondents do not allege they are COVID-19 positive. The Court therefore leaves it to the discretion of the Director to determine which COVID-19 positive individuals can self-isolate instead of being detained in a government isolation facility.

III. ORDER

Pursuant to 10 GCA § 19605(b)(5), the Court ORDERS that:

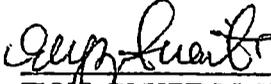
1. Because Respondents stipulate to the Government's quarantine for 14 days from the date of their arrival on Guam, Respondents shall remain in quarantine for the 14 days, unless they test negative for COVID-19 prior to the 14th day.
2. Upon the expiration of the 14 days, the Government is ORDERED to release from quarantine any Respondent who does not demonstrate symptoms associated with COVID-19, subject to the next paragraph.
3. The Court GRANTS the Government's Petition to continue for another 14 days the quarantine of any Respondent who, prior to the expiration of the initial 14

⁵ It is not clear whether the Government will lift the priorities for testing once more kits become available. Since physicians, health care workers and others may access Respondents to "meet their needs," 10 GCA § 19604(d), if the Government has access to more tests, it has an obligation to allow Respondents an opportunity to be tested.

days, does not demonstrate symptoms associated with COVID-19 but who has come into contact with someone who has tested positive for COVID-19.

4. The Court GRANTS the Government's Petition to continue the isolation of any quarantined individual who has tested positive for COVID-19; and that such isolation shall continue until DPHSS determines that the individual is no longer in danger of spreading COVID-19 to others, and for no longer than until April 28, 2020, at 12:00 a.m. or further Order of the Court.
5. The Government shall serve this Order on all Respondents.

SO ORDERED this 1st day of April 2020.



HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

Appearing Attorneys:

Steven Hattori, Esq., and John P. Morrison, Esq., Public Defender Service Corporation for Respondents

Attorney General Leevin Camacho and Assistant Attorney General Shannon Taitano for the Department of Public Health and Social Services